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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

REBECCA GALLARDO,

Defendant and Appellant.

F041103

(Super. Ct. No. 26032)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Harry Jacobs, Judge.

Alan C. Messarra, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stan Cross and Patrick J. Whalen, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Ardaiz, P.J., Wiseman, J. and Levy, J.

Rebecca Gallardo (appellant) appeals her conviction on drug possession charges. She contends there was insufficient evidence to support her conviction on two of the counts. We affirm.

### **STATEMENT OF THE CASE**

Appellant was charged by information with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), possession of narcotics paraphernalia (Health & Saf. Code, § 11364), possession of marijuana (Health & Saf. Code, § 11357, subd. (b)), and possession of a hypodermic needle (Bus. & Prof. Code, § 4140). A jury convicted appellant on all counts in April of 2002. Appellant received probation pursuant to Proposition 36, and timely appeals.

### **FACTS**

In June of 2001, Merced police officers executed a search warrant at East 23rd Street in Merced. Upon arriving at the house officers observed appellant and a man standing in front of an automobile, with the hood up. An officer searched appellant, found marijuana in her pockets, and placed her in handcuffs. Inside the car officers found marijuana, methamphetamine, a glass smoking pipe and documentation with appellant's name on it.

Officers escorted appellant inside the house and placed her in the kitchen. Officers found what appeared to be pay/owe sheets, notepaper with appellant's name on it and other indicia that she lived in the apartment, a hypodermic needle, scales and a pager. In the kitchen, on the ground near where appellant was sitting, officers then found another plastic bag of methamphetamine. Appellant's son acknowledged living in the house and told an officer that his mother owned the car parked in the driveway. At trial the son stated he did not know who owned the car, though he still admitted living in the house.

## DISCUSSION

### **Sufficiency of the Evidence**

Appellant's only claim on appeal is that the evidence was insufficient to convict her of charges of possession of methamphetamine and possession of a smoking device. Specifically, appellant maintains there was "no evidence" that she had constructive possession of the methamphetamine found in the car and the kitchen, and the smoking device found in the car. As set forth below, we disagree.

As to the methamphetamine found in the kitchen, the record showed that appellant was placed in the kitchen while officers searched the house. Before appellant was placed there, officers searched the kitchen and observed no methamphetamine. Appellant was moved around in the small kitchen, and was not under total police observation the whole time. One of the officers on the scene testified his eyes "were not constantly on her" because he "was in the process of also searching and watching her at the same time." Contrary to appellant's argument, no one officer was charged with watching her the entire time. No one besides appellant and the searching officers was in the kitchen. Methamphetamine was later found on the kitchen floor.

From that evidence, the jury could -- and apparently did -- make reasonable inferences about the connection between appellant and the methamphetamine on the kitchen floor. "Constructive possession occurs when the accused maintains control or a right to control the contraband; possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another." (*People v. Williams* (1971) 5 Cal.3d 211, 215.) Circumstantial evidence and reasonable inferences from circumstantial evidence are sufficient to establish possession of methamphetamine. (*Armstrong v. Superior Court* (1990) 217 Cal.App.3d 535, 538-539.) Substantial evidence must show that appellant was a "person who possesse[d]" methamphetamine for use to uphold the judgment of conviction. (See Health & Saf.

Code, § 11377, subd. (a).) Based on the evidence as set forth above, and applying the test of “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,” we conclude the record contains sufficient evidence of constructive possession of methamphetamine. (*People v. Staten* (2000) 24 Cal.4th 434, 460, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319)

The same test applies with respect to appellant’s challenge to the methamphetamine and smoking pipe found in the car in the carport. Appellant’s claim that “no reliable evidence” exists to show that she had “dominion and control” over the automobile at the time of her arrest ignores the record before this court. In addition to appellant’s presence under the hood of the car at the time of the officer’s arrival, the police also found documents with appellant’s name on them inside the car. Most importantly, however, appellant’s son told the police that it was his mother’s car and she was having people over trying to fix it. Accordingly, as with the methamphetamine found on the kitchen floor, we have no trouble concluding a reasonable trier of fact could infer the methamphetamine and smoking pipe found in the car belonged to appellant.

#### **DISPOSITION**

The judgment is affirmed.